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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,177	03/15/2004	Richard S. Belliveau		1469
27550	7590	11/04/2005		
WALTER J, TENCZA JR. 10 STATION PLACE, SUITE 3 METUCHEN, NJ 08840				
			EXAMINER LEE, Y MY QUACH	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,177

Applicant(s)

BELLIVEAU, RICHARD S.

Examiner

Lee Y Quach

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/15/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 2875

DETAILED ACTION***Reissue Applications******Response to Arguments***

1. Applicant's arguments filed July 25, 2005 have been fully considered but they are not persuasive. Applicant states that the present reissue claims 13 to 82 combine the elected species of Figure 3F with the non elected species of figures 3D and 12C and therefore are in the nature of or analogous to a linking claim. Applicant also states that In Re Doyle, failure to present linking claims was an error in the issued patent correctable by reissue and that the linking claims In re Doyle read both on a non-elected group of species and an elected group of species. In light of In Re Doyle, applicant relates that the reissue claims are in the nature of a linking claim. Accordingly, applicant erred by failing to appreciate the scope of the invention at the time of the original patent grant and failing to present one or more claims which combine part of the elected species and part of the non elected species.

2. It should be noted that a linking claim, according to In Re Doyle, is a claim broad enough to read on the invention elected (and patented) together with the invention not elected. Note MPEP 1412.01 Page 1400-17 August 2005. While the detailed circuitry of the reissue claims may be directed to the elected species 3F, the circuitry along with ventilations holes in the substrate, a variable filter, a remote control, a yoke and ...were neither patented nor broad enough to read on the species elected and patented in the original patent 6357893. Because the reissue claims are not broad enough to read on, meaning generic to, the invention elected (and patented) together with the invention not elected, the reissue claims are therefore not analogous to the linking claims and the error as failing to present linking claims providing base for reissue of the patent has not been met. In accordance to 35 U.S.C. 251, there must be at least one error in the patent to provide grounds for reissue of the patent. However, the error attempted to be corrected is not an error correctable through 35 U.S.C. 251 since the reissue claims are not corresponding to linking claims, consequently, there is no error present or relied upon to support the reissue application, and the patent therefore will not be reissued.

Art Unit: 2875

3. The reissue oath/declaration filed with this application is defective (see MPEP § 1414) because the error attempted to be corrected is not the type of error that is correctable through reissue, the requirement under 35 U.S.C. 251 therefore has not been met.
4. Claims 1 to 82 are rejected as being based upon a defective reissue oath or declaration under 35 U.S.C. 251 for lack of error as set forth above. The nature of the defect(s) is set forth in the discussion above in this Office action.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service whose telephone number is 571-272-2815.

Y. Q.
October 20, 2005



Y Quach Lee
Patent Examiner
Art Unit 2875